

SPORTS LITIGATION ALERT

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Cases

NFL Wins Motion To Dismiss In Unusual Social Media Antitrust Case

By Jeff Birren, Senior Writer

A modern twist on an old axiom is that those with the gold get sued in today's sports' world. A recent example just played out when two NFL fans sued the NFL and NFL Enterprises for supposedly violating federal antitrust law by allowing fans to gain free access to team updates on "X" but "barred" teams from

posting on "Bluesky Social BBC." Patrick Brown and Collin Vincent prefer to receive the identical information from Bluesky. They claimed that the defendants' behavior was an "unreasonable restraint on trade that violated 15 U.S. C. 1". The Court granted a motion to dismiss because the Amended Complaint "did not plausibly plead that Brown and Vincent suffered a cognizable injury in fact." *Patrick Brown and Collin Vincent v. National Football League, Inc. and NFL Enterprises, LLC*, Opinion & Order, S.D.N.Y., Case 1:25-cv-01220-PAE (02-03-2026).

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Background

The Court took its “Factual Background” “from the Amended Complaint” (“AC”). Brown and Vincent have Bluesky Social BBC (“Bluesky”) accounts and would follow NFL teams on Bluesky if that was permitted by the NFL. The NFL and X “have a ‘content partnership’” that “allows X to publish real-time highlights from football games”. “During the offseason, reporters post news about team practices and other related topics on X.” Fans can discuss team activities including free agency acquisitions “and other roster changes”. In 2024, there were more than one million posts concerning the annual player draft and “these appeared on users’ screens more than 800 million times.” Fans “do not pay to receive NFL news on X.”

Bluesky is “a microblogging platform that was founded to move ‘online discourse beyond the control of social media oligarchs.’” It “has more than 28 million users.” According to Brown and Vincent, “many” are “‘Twitter refugees’ who left Twitter due to rapid changes to rules and culture under the ownership of Elon Musk.” Initially, “multiple NFL teams” had accounts with Bluesky. Bluesky “closely matches the functionality of X” and NFL teams could “‘use it exactly the way they use X.’” Bluesky, like X, does not charge fans to “open accounts or view posts regarding the NFL.”

The AC does not allege when “individual teams used (or stopped using) Bluesky, or when the NFL instructed them to stop doing so.” Apparently, the NFL “instructed its member teams to delete their Bluesky

accounts.” But for this instruction, “at least some NFL teams would use Bluesky.” The “Patriots vice president of content, Fred Kirsch, for example, has stated: ‘Whenever the NFL gives us the greenlight[,] we’ll get back on Bluesky.’”

Teams have accounts on other social media providers “but they tend not to use these to post the real-time updates they post on X”. The “result of the NFL’s alleged ban” on the use of Bluesky is that “Brown and Vincent must choose between receiving real-time updates uniquely available on X and foregoing such content.” This “content is important to fans who participate in fantasy football leagues” and who “compete against other, sometimes for monetary prizes, based on the players’ on-field performance.” There is no other “monetary consequence to fans from the NFL’s ban on Bluesky”, and fans “do not pay money for their team’s news on X’ (or Bluesky), but instead ‘pay attention, which social media platforms ... in turn monetize by advertising and by selling data.’”

The AC “implies” that Brown and Vincent “play fantasy football in leagues where money is at stake.” The information posted on X is “‘exactly the sort of information relied upon in making decisions on fantasy football or other games of skill.’” Brown and Vincent “are injured ... if they choose not to engage with X”. Brown and Vincent do not allege that they have “lost money in such leagues as a result of lack of access to real-time content uniquely accessible on X.”

In Court

Brown and Vincent filed their 14-page complaint on February 11, 2025. The AC “incorrectly terms” one defendant as “National Football League, Inc.” The NFL and NFL Enterprises each filed a Motion To Dismiss on May 13, 2025, under Rule 12(b)(1) for lack of subject matter jurisdiction, a Request For Judicial Notice, and a Declaration with 25 Exhibits (Docket Entry 30 & 31.) It also moved to dismiss “under Rule 12(b)(6)” as “the AC does not state a claim, because it does not plausibly allege a *per se* or rule-of-reason violation of § 1 and because Brown and Vincent lack antitrust standing.”

Brown and Vincent filed an Opposition on June 12, and the NFL and NFL Enterprises filed Reply Briefs on July 3, 2025, along with a Further Request For Judicial Notice. There the case sat silently for seven months,

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without oral argument. On February 3, 2026, the Court issued its “Opinion & Order.”

Motion To Dismiss: Legal Standards

Courts must grant a motion to dismiss when a plaintiff lacks “constitutional standing to bring the action.” “A plaintiff must show by a preponderance of the evidence that jurisdiction exists, and a court may consider evidence outside the pleadings, including exhibits and affidavits.” Article III “limits federal judicial power to the resolution of ‘cases’ and ‘controversies.’ U.S. Const. art III., § 2.” A “plaintiff must have standing to sue. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992).” This is a “threshold question in every federal case.” The “irreducible constitutional minimum” is that “‘a plaintiff (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’ *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).”

The injury “must be concrete”, that is, “‘real and not abstract.’ *Id.* at 340.” The “most obvious” examples of these are “physical and monetary harms.” Financial loss is “a classic pocketbook injury sufficient” to confer standing. Certain intangible harms “can also be concrete”, including “the abridgement of free speech and infringement of free exercise of religion. *See, e.g., Spokeo*, 578 U.S. at 340.” Congress may also “elevate to the status of legally cognizable injuries concrete, *de facto*, injuries that were previously inadequate in law.” *Id.* at 341”. Congress’s “expectations can be ‘instructive’ on whether a harm is sufficiently concrete to qualify as an injury. *Id.* But a statutory violation does not necessarily confer Article III standing, which ‘requires a concrete injury even in the context of a statutory violation’. *Id.*” “Put simply: ‘No concrete harm, no standing.’” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021).

The Asserted Injury

Brown and Vincent claimed that receiving “real-time NFL information” on a microblog is a “separate product market” from receiving the identical information on X. The information might be “days or weeks old” on other platforms and “NFL teams’ posts on X contain ‘granular and time-sensitive’ information.” The NFL “bars teams from cross-posting this information on

Bluesky.” As a result, Brown and Vincent must choose between foregoing this content, or using X, a content provider “with which they prefer not to associate”.

However, the NFL had not barred Brown and Vincent from receiving real-time information. They acknowledged that this information was available on X. The AC admitted that if the NFL were to lift its ban on Bluesky, no additional information would be available that is not currently available on X. The AC did not allege that the plaintiffs “have any freestanding legal entitlement to receive this information in real-time

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or otherwise—let alone on any particular, platform or channel. To the contrary, it acknowledges that this information is disseminated at the discretion of privately owned and operated NFL teams.”

The imagined “conspiracy” is that Brown and Vincent have been “denied the ability” to receive the information “on a private platform with which they are ideologically comfortable with.”

“Tangible Injuries”

Brown and Vincent did not “plausibly allege” that they had suffered a monetary loss. They had not “paid more money to access the information at issue. On the contrary”, the AC admitted that it was free on X. There was a vague implication that they “could potentially make money playing fantasy football” and foregoing X “could impair their prospects of making money.” This did “not salvage plaintiff’s bid.” The Opposition “abandoned the claim that diminished odds of winning” was a cognizable injury. Allegations “of possible future injury are not sufficient” (emphasis in the original). *Summers v. Earth Inst.*, 555 U.S. 488, 496 (2009).” Furthermore, Brown and Vincent did not claim that they were denied access to the information but merely were denied “access to it on” their platform of preference.

The next “attempt to claim a concrete injury” is that if the NFL allowed teams to post the information on Bluesky, they “would pay attention to it.” This would allow the NFL to “monetize” their engagement on Bluesky through “advertising and selling data. These tortured formulations do not avail plaintiffs.” Their “‘attention’ is an intangible that cannot be likened to money.” Furthermore, this implies that NFL “teams are missing out on money”. This theory “is pled conclusorily.” Those teams “are not plaintiffs here.” A plaintiff “must assert his own legal rights and interests”. The AC “does not plausibly plead an injury in fact based on pecuniary or other tangible harm”

“Intangible Injuries”

“Certain intangible injuries can support Article III standing.” Brown and Vincent failed to do so. They did not assert that the “bonanza of real-time updates on X” are different in quality or quantity than those that would be posted in the absence of the alleged conspiracy. Their “grievance is instead that that they are unable to receive identical content on the social media

platform that they prefer.” That does not confer Article III standing, nor did they “contend” that their “intangible injury” “resembles any injury traditionally recognized” by courts as a basis for federal court jurisdiction.

Their claimed harm was “notably less concrete than the harm” rejected in *Murphy v. Missouri*, 603 U.S. 43 (2024). Murphy and others sued the executive branch, claiming a violation of their First Amendment rights. Their assertion was the defendants pressured social media platforms “to suppress protected speech regarding Covid.” They claimed a First Amendment “right to listen.” The Supreme Court held that there is a “cognizable injury only where the listener has a concrete, specific connection to the speaker. *Id.* at 74-75.” Brown and Vincent had “not alleged an inability to receive any information.” They “merely disdain the platform on which it is available.” Perhaps Brown and Vincent forgot that this was not a First Amendment case.

Their “ideological discomfort with X does not implicate any legally protected interest.” The Article III injury-in-fact requirement “screens out” plaintiffs who “only have a general, legal, moral, ideological or policy objection. *FDA v. All. For Hippocratic Med.* 602 U.S. 367, 381, (2024).” The Sherman Act “is aimed at conspiracies in restraint of trade or commerce. Its focus is on collusive conduct with anticompetitive effects. *See, Brunswick Corp. v. Pueblo Bowl-O-Matic, Inc.*, 429 U.S. 477, 488-89, (1977).” Failure to receive the information “on their preferred social media channel—is far afield from the harms to which § 1 is directed at. Such a bare claim does not give all citizens the right to sue in the absence of a distinctive concrete harm.”

The grasping search for straws continued. “*Ross v. Bank of America*, 524 F.3d 217 (2d Cir. 2008), the antitrust case on which Brown and Vincent principally rely, is far afield.” The *Ross* plaintiffs claimed that banks colluded to force credit card customers to accept mandatory arbitration provisions. The Court of Appeals ruled that “‘reduced choice and diminished quality in credit card services’—satisfied the injury-in-fact requirements. *Id.* at 223-24 (emphasis added.)” Customers had to “expend time and legal fees to monitor the legality of the banks behavior”; received a card that limits customer choices; and was thus less valuable. “Brown and Vincent do not claim any diminution in value of a product or service.” Nor did they claim any

difference in the “real-time NFL news accessible on X and that would be available on Bluesky.”

Brown and Vincent also relied on *Laumann v. Nat'l Hockey League*, 907 F. Supp. 2d 465 (S.D. N. Y. 2012). The Court distinguished *Laumann* because the allegations claimed that the video packages they purchased was due to a conspiracy that “not only resulted in less choice, but also ‘reduced output, diminished product quality, and suppressed price competition.’ *Id.* at 471.” Plaintiffs’ claim to a lack of real-time updates “is not traceable to the NFL’s conduct. It is proximately due to the fact that plaintiffs’ ‘prefer not to or refuse to’ use that platform. AC ¶¶68.” The Court cited three other cases, all to the effect that self-inflicted injuries do not confer Article III standing. “The AC therefore does not plead a cognizable Article III injury.”

“Dismissal Without Leave to Amend”

In a “single, unelaborated-upon sentence, Brown and Vincent ask for leave to amend the AC in the event of dismissal.” This is left to the court’s discretion. It can be denied in instances of futility or repeated failure to cure deficiencies by amendments previously allowed. “Both of these circumstances are present.” It would be futile because their injuries “unavoidably are not concrete. And Brown and Vincent have already amended the operative complaint once in an attempt to overcome the NFL’s arguments.” They also failed to describe a proposed new pleading that would cure the deficiencies.

“Conclusion”

The Court granted the motion to dismiss under Rule 12(b)(1) without leave to amend the AC, due to a lack of subject matter jurisdiction. Or not. Because the case was closed for lack of subject matter jurisdiction, “it is without prejudice to plaintiffs’ ability to file a new action with a proper jurisdictional basis. *See Carter v. HealthPort Techs. LLC*, 822 F. 3d 47, 54-55 (2d Cir. 2016) (where a complaint is dismissed for lack of Article III standing, the dismissal must be without prejudice, rather than with prejudice.” The Court did not rule on the NFL’s motion under F.R.C.P. Rule 12(b)(6) for failure to plead an antitrust violation and denied the request to take “judicial notice of certain exhibits filed in” Docket Entries 30 and 31 “as moot”.

Editorial

Please. It is easy to see this as a nuisance suit, but paying legal bills to defend this sort of thing is not just a nuisance. Whatever one’s opinions about Elon Musk, or other social media barons, the Sherman Act was directed at restraints of trade in interstate commerce that impact business competitors and consumers, not boycotts based on ideological preference. Boycott X, boycott Musk, Zuckerberg or anyone or anything else, but 15 U.S.C. 1 does not require every business to provide, for free, the same service on the platform of choice of every single member of the public.

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Missouri Court Addresses School District Putting The Kibosh On Quarterback’s Transfer To Rival HS

By Gary Chester, Senior Writer

A Missouri high school quarterback transfers for his senior year due to alleged racism, but school administrators fraudulently represent in the paperwork that he was improperly recruited and ineligible to play. The governing body declares the student ineligible, and the student and his parents file lawsuits. It’s a slam-dunk winner, right?

Yes and no. *Mabins v. Missouri State High School Activities Association*, Nos. SD38982 and SD38993 (Mo. App. Jan. 23, 2026) serves as a reminder that attorneys with favorable facts on their side must still plead the most applicable cause of action.

Mabins v. MSHAA, Part I

In some towns, high school football involves all the intensity of an Ohio State-Michigan game. Even though the activity concerns students in their teens, sometimes their welfare takes a back seat to the goal of winning at all costs. Such was the case with Kyle Mabins, who played quarterback for three seasons at Kickapoo High School in Springfield, Missouri before transferring to Glendale High School for his senior year. Glendale High is in the same district as Kickapoo.

Kickapoo indicated on the required transfer application that Mabins’s transfer was partly due to athletic reasons and undue influence. The Missouri State

High School Activities Association (“MSHSAA”) investigated the circumstances and concluded that former Glendale coaches Mike Mauk and Ben Mauk had unduly influenced him to transfer. The Mauks had been friendly with the Mabins family since at least 2020. The Association ruled Mabins ineligible to play in his senior year. His parents filed an appeal, which MSHSAA denied.

On August 28, 2023, Mabins’s parents filed a lawsuit on his behalf against MSHSAA and the School District of Springfield (“SPS”). On September 22, 2023, Judge Derek Ankrom issued an injunction enjoining the defendants from enforcing the ruling and permitting Mabins to play for Glendale. The court found credible evidence that the athletic director at SPS and the activities director at Kickapoo had committed fraud. They had reportedly provided MSHSAA with video evidence of Mabins working out with a Glendale coach two years before the transfer. The individuals allegedly knew that the adult in the video with Mabins was not a Glendale coach.

MSHSAA filed an appeal with the Southern District Court of Appeals which affirmed the trial court’s decision on October 10, 2023. Mabins was eligible to participate in MSHSAA-sanctioned interscholastic sports. (Three days later, Kickapoo defeated Glendale 40-0, with Mabins dividing time with a teammate at quarterback.) In May 2024, the lawsuit was dismissed because Mabin had participated in football in his senior year and did not wish to play any Winter or Spring sports.

Mabins v. MSHSAA, Part II

Mabins’s parents also filed discrimination claims with the Missouri Commission on Human Rights in October 2023. They alleged that they and their son had complained about racial discrimination and harassment against Kyle and other African American students by the Kickapoo Athletic Administration. They claimed that SPS had retaliated against them and their son by falsely stating in the transfer form that Kyle’s transfer was the result of undue influence and athletic reasons, which would have rendered him ineligible to play football and other sports for Glendale but for the court’s injunction.

The parents alleged that SPS “engaged in conduct of race discrimination, harassment and hostile

environment by a difference in treatment” of their son. Mabins and his parents filed separate lawsuits against the defendants in 2024, alleging discrimination in public accommodation in violation of the Missouri Human Rights Act (MHRA), as well as retaliation against Kyle by making him ineligible for athletics at Glendale. The trial court dismissed the parents’ lawsuit, and they appealed to the Missouri Court of Appeals in the Southern District.

There were two issues on appeal: (1) whether the parents had a viable cause of action for direct discrimination under the MHRA and (2) whether there was a cognizable claim for discrimination by association under the MHRA.

Direct discrimination requires an allegation that the defendants denied the plaintiff “full and equal use and enjoyment” of a public accommodation because of the plaintiff’s protected class. The court cited a 2023 Missouri case in which a school district allegedly denied a transgender plaintiff equal access to the boys’ restroom and locker rooms as an example of a direct MHRA violation.

The Mabins alleged that SPS had misrepresented their son’s reason for transferring in retaliation for their complaints of racial discrimination. They alleged that the actions of SPS and MSHAA were designed to dissuade them from making reports and advocating for their son “to address and remediate unlawful prohibited conduct of discrimination and retaliation as engaged in...by SPS and MSHAA.”

The court ruled for the defendants on the issue because the parents failed to allege that they were personally denied access to areas of public accommodations because of their race or that they were discriminated against in their use of a public accommodation because of their race. Also, the parents did not allege “retaliation *against themselves*” on the basis of a protected class.

The court also ruled for the defendants on the parents’ claim of discrimination by association. The parents failed to allege that they were denied the right to equal use of public accommodation because they were accompanied by their son, who was an individual protected from discrimination based on his race. The court distinguished the case from a 1999 Missouri case in which a restaurant did not allow a patron and her two friends into the establishment because

the two friends were blind and had guide dogs with them.

The Takeaway

Part III of *Mabins v. MHSAA* is Kyle Mabins's separate lawsuit against the defendants. The basis for dismissal of the parents' lawsuit is unrelated to their son's claims of discrimination. If Kyle establishes harassment and discrimination based on race, he will again throw SPS for a loss. SPS may rely on an investigation by its St. Louis law firm finding that the Mabins did not complain of racial discrimination before their son's transfer request; the Mabins claim they had registered a complaint before Kyle applied for a transfer, but SPS did not promptly investigate.

That Kyle filed his own lawsuit raises a question about the legal strategy behind his parents' lawsuit; perhaps the family was trying for two bites from the apple.

A second and more compelling question: Why did Mabins's parents not file a Title IX claim for harassment against the school district on their son's behalf? Was that overlooked because he was transferring, or perhaps because playing football was the overarching priority? Had the parents pleaded racial harassment of a minor in violation of Title IX in addition to the MHRA claim, their lawsuit might have survived the defendants' motion to dismiss.

Regardless, Kyle Mabins was permitted to play for Glendale, and his former school district was exposed as caring more about athletics than athletes. And MSHAA appeared petty and misguided by appealing a preliminary finding by an impartial jurist that the SPS had conspired to keep Mabins off the field through fraud. If SPS had duped MSHAA, why continue to push for Mabins's ineligibility? Were there other factors at play that the courts and the news media were not privy to?

The results of this student-athlete's lawsuit will be of interest in the realm of Missouri sports and education, and possibly beyond.

Court Dismisses Lawsuit Over Sideline Injury in High School Football Game, Citing Assumption of Risk

By **Carla Varriale-Barker, Eileene McKee, and Riggs Faulkenberry, of Segal McCambridge**

The plaintiff was allegedly injured at his son's football game at Monsignor Farrell High School while volunteering as a member of the chain crew. As a member of the chain crew, one holds the first-down marker on the sidelines and moves the marker as the ball is progressed up and down the field. The plaintiff was standing on the sideline with the line marker when a player attempting to make a tackle collided with him, allegedly causing severe injury to his leg.

In 2023, the plaintiff initially filed suit against the Archdiocese of New York and Monsignor Farrell High School, claiming their negligence led to his injuries. He alleged that the defendants put him in harm's way and did not adequately protect him from injury.

Initially, the defendants' attorneys in the first case moved for summary judgment, arguing that the plaintiff assumed the risk of his injury. Under the assumption of risk doctrine in New York, property owners are protected from liability when plaintiffs are injured during recreational activities if the plaintiff willingly participated, was injured by an inherent risk of the activity, and had knowledge of that risk.

In his deposition, the plaintiff testified that he signed up to volunteer for the team, as it was encouraged for parents of players to do so. Despite it being his first time working on the chain crew, he was a willing participant and had observed others performing this role at prior games. He testified that he had attended many football games and was aware of the risk of being hit by a player while standing on the sideline. He further testified that he was not surprised he was injured, but was surprised by the extent of his injuries.

The plaintiff opposed the motion by arguing that the defendants unreasonably increased the risk of injury beyond those inherent in the sport by failing to train him and properly control the teams. Despite this argument, the court ruled in favor of the defendants and granted summary judgment.

In pursuit of another opportunity to recover monetary damages, the plaintiff commenced a second action

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in 2025 against the Catholic High School Athletic Association, the New York State Catholic High School Athletic Association, the Catholic Central High School Athletic Association, Inc., the New York Catholic High School Football League, six referees from the game, and Bishop Hendricken High School, the visiting team.

On behalf of our clients, we filed a pre-answer motion to dismiss the plaintiff's latest action, relying on the doctrines of res judicata and collateral estoppel. These doctrines bar plaintiffs from relitigating issues that have already been decided. We argued that the facts of the case were identical to those in the 2023 matter, and that the plaintiff had simply substituted new defendants in an attempt to relitigate the same claims. As such, it had already been determined that the plaintiff assumed the risk of his injury, eliminating any duty of care owed by the defendants.

We also emphasized that Christopher Malkin and Ronald Eason were independent contractors hired solely to officiate the game, and therefore were not owners or occupiers of the premises and had no duty to inspect, maintain, control, or supervise the property. Additionally, the actual premises owner, Monsignor Farrell High School, had already been granted summary judgment in the 2023 matter.

We further argued assumption of risk as an independent basis for dismissal, asserting that even if res judicata and collateral estoppel did not apply, the plaintiff still assumed the risk of his injuries, thereby eliminating any duty of care.

All defendants in the 2025 action made similar arguments, and the court granted dismissal as to all defendants, barring the plaintiff's claims on the grounds of res judicata and collateral estoppel.



Varriale-Barker is a shareholder, and McKee is an associate. Faulkenberry is a former Clemson University football team member and an incoming Juris Doctor candidate at the University of Pennsylvania Carey Law School.

Florida Attorney's Racketeering Conviction for Defrauding NFL Players Affirmed by the 11th Circuit

By Robert J. Romano, JD, LL.M., St. John's University, Senior Writer

In a significant appellate court development, the United States Court of Appeals for the Eleventh Circuit affirmed the federal racketeering conviction and sentencing for defrauding retired NFL players and other clients of Tallahassee attorney Phillip Timothy Howard. For those unfamiliar with Phillip Timothy Howard or his multiple transgressions (as I was when I began to write this piece), he was a principal at the law firm of Howard & Associates, P.A. based in Tallahassee, Florida and between December 2015 and January 2018, he used his law firm and an assortment of affiliated investment entities to allegedly defraud a number of clients, which included former NFL players, third-party litigation lenders, and a university professor, to the tune of \$12.6 million. These victims were largely individuals who had either sustained injuries during their athletic careers and were pursuing compensation through litigation, or those interested in various investment opportunities offered to them by Howard's firm. The Appeals Court decision underscores the reach of the federal Racketeer Influenced and Corrupt Organizations Act (RICO) into attorney misconduct and highlights the judiciary's unwillingness to disturb negotiated guilty pleas in complex financial-fraud prosecutions.

By way of background, in 2023 as a result of his malfeasance, which included no less than wire fraud and money laundering, a federal grand jury indicted Howard on racketeering and related offenses under 18 U.S.C. § 1962(c) – Racketeer Influenced and Corrupt Organizations Act (RICO). Howard subsequently pleaded guilty in the U.S. District Court for the Northern District of Florida to one count of racketeering and U.S. District Judge Allen Winsor sentenced him to 168 months' imprisonment, followed by three years of supervised release. The court also imposed a restitution obligation exceeding \$12.6 million, representing the actual loss attributable to his conduct, and entered a forfeiture money judgment of approximately \$10.65 million under 18 U.S.C. § 1963. It should

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be noted that the sentence was significantly below the statutory maximum for the RICO offense.

Subsequently, Howard attempted to overturn his conviction and/or reduce his sentence, asserting that the district court erred in its factual or legal determinations regarding his conduct and punishment. In his appeal to the Eleventh Circuit, Howard argued that his plea deal lacked a sufficient factual basis, nor was it knowing nor voluntary.

In an unpublished opinion issued January 7, 2026, a panel of the Eleventh Circuit rejected each of Howard's arguments and affirmed the conviction, sentence, restitution order, and forfeiture judgment in full. The court rejected all of Howard's arguments and pointed to the signed plea agreement and attached statement of facts in which he admitted, among other things, that he founded and ran the entities, recruited former NFL players and other investors, concealed the barred investment manager's background, and misrepresented how client funds were invested and what returns they could expect. The court also noted that Howard confirmed under oath that he had reviewed and "just signed" the plea agreement in court, understood the charge and the rights he was waiving, and was, in fact, guilty of the conduct described. Although he suggested he did not intend that his clients would be left without money at the end of their investments, he admitted that he failed to disclose material facts he had a duty to reveal, which the court characterized as legally sufficient fraudulent intent. The court therefore found no constitutional defect in the plea and affirmed the conviction. This, together with his prior admissions, the Eleventh Circuit found that the district court could reasonably find guilt per the terms outline within the RICO statutes.

The Eleventh Circuit's decision in Howard's case carries several important implications for the legal profession. As we are well aware, attorneys are entrusted with the fiduciary duties of loyalty, candor, and competence in representing clients. When that trust is breached, particularly in cases involving vulnerable and injured clients, the consequences extend not only to the attorney's criminal liability but also to the broader reputation of the profession. Disbarment and criminal sanctions serve both punitive and deterrent purposes, sending a clear message that abuse of

legal credentials to commit fraud will be vigorously prosecuted and upheld on appeal.

Additionally, the Eleventh Circuit's affirmation of Howard's racketeering conviction and sentence serves as a major victory for federal law enforcement and fraud victims alike. The decision reinforces key principles in white-collar criminal jurisprudence: that racketeering statutes apply to professional misconduct cloaked in legitimacy. As for the former NFL players and other victims defrauded by Howard's racketeering enterprise, this appellate outcome provides legal closure and ensures long-term accountability for a breach of trust that inflicted substantial financial and emotional harm.



Robert J. Romano

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Pennsylvania Law in Negligence Case Cuts Both Ways in Skiing Cases

By James Moss

Ski Shawnee, Inc., a small ski area located minutes from the New Jersey boarder was fighting two negligence claims, or maybe more, at the same time. One in Federal Court, *Birl v. Ski Shawnee, Inc.*, 2026 U.S. App. LEXIS 20; 2026 LX 70043, and one in state court, *Lin v. Shawnee Mt. Ski Resort*, 2025 Pa. Super. Unpub. LEXIS 3259; 2025 LX 571762, which were decided within 24 days of each other.

In *Lin*, the plaintiff described herself as a Type II skier. Type II is a rating developed by ski binding manufacturers to determine the level of adjustment of the binding based on the skier's height, weight, age, and skiing ability. These factors are charted, and a value is determined that is then set in the value. This value makes it easier or harder to exit the binding. The ratings go from Type I, beginner, through III, expert level skier. *Lin* stated she was an intermediate-level skier.

Lin was skiing green or beginner slopes that day. Ski slopes are rated by the ski area based on their level of difficulty. Green runs are beginner runs, Blue

runs are intermediate, and Black runs are expert runs. On the last run (hard to get injured and ski another run), Lin skied off the slope across the runout and could not slow down; she skied away from and missed a rack of skis, but went through the lodge window, sustaining multiple injuries. Lin and a person skiing with her stated that Lin could not slow down because the area was too icy. (I think falling is always better than going through plate glass windows. But that is just my opinion.)

Lin sued Ski Shawnee, Inc. for negligence, gross negligence, and recklessness, and sought both compensatory and punitive damages in the Pennsylvania state court. A punitive damages allegation was dropped. Ski Shawnee filed a motion for summary judgment, which was granted based on the release Lin had signed when she rented her ski gear that morning and the [Pennsylvania's Skiers Responsibility Act](#) (the Act), 42 Pa.C.S.A.

Lin's expert witness, which the court quoted several times, stated that there should have been a deceleration area, safety barriers, and tempered glass, among several allegations in his report of the ski area's gross negligence.

The issue then boiled down to whether the facts alleged by the plaintiff, supported by her expert witness, were sufficient to support an allegation of gross negligence. Gross negligence was defined by the court as:

Gross negligence "constitutes conduct more egregious than ordinary negligence[,] but does not rise to the level of intentional indifference to the consequences of one's acts."

The court differentiated gross negligence from recklessness, which was also pleaded by Lin, defining recklessness under Pennsylvania law as:

"Recklessness is distinguishable from negligence on the basis that recklessness requires conscious action or inaction which creates a substantial risk of harm to others, whereas negligence suggests unconscious inadvertence."

Courts always follow these definitions with the disclaimer that releases, or, in this case, exculpatory releases, do not release claims of gross negligence.

Exculpatory releases of reckless behavior are unenforceable, "as such releases would jeopardize the health, safety, and welfare of the people by removing

any incentive for parties to adhere to minimal standards of safe conduct."

Many states have stood on the edge of the gross negligence abyss, trying to find a way to argue through motions that a release can bar gross negligence claims, but have not dared take the leap except in Nebraska, which does not recognize claims for gross negligence (see *Palmer v. Lakeside Wellness Center*, 281 Neb. 780; 798 N.W.2d 845; 2011 Neb. LEXIS 62). Or where the allegations in the complaint do not add up to a claim for gross negligence (*Cotty v. Town of Southampton, et al.*, 2009 NY Slip Op 4020; 64 A.D.3d 251; 880 N.Y.S.2d 656; 2009 N.Y. App. Div. LEXIS 3919). Additionally, some courts have held that assumption of the risk can bar a gross negligence claim (*Downes et al. v. Oglethorpe University, Inc.*, 342 Ga. App. 250 (Ga. App. 2017)). However, overall, gross negligence claims typically reach a jury.

Here, the appellate court stated that the only way a judge could determine if there was no gross negligence was if there was no way a jury could find a claim for gross negligence.

...a given set of facts satisfies the definition of gross negligence is a question of fact to be determined by a jury, a court may take the issue from a jury, and decide the issue as a matter of law, if the conduct in question falls short of gross negligence, the case is entirely free from doubt, and no reasonable jury could find gross negligence

The appellate court sent the case back to the lower court for a jury to determine whether Ski Shawnee's failure to act amounted to gross negligence. The release the plaintiff signed to rent her ski equipment did bar her claims against Ski Shawnee for simple or ordinary negligence.

Shawnee's release does not indemnify it against any acts of gross negligence or recklessness, but it does bar Lin's claims for ordinary negligence

Judge in Birl Cites Inherent Risks of Skiing

Contrast this decision with *Birl v. Ski Shawnee, Inc.*, decided 28 days earlier by the Third Circuit Court of Appeals. In *Birl*, it was claimed that the ski area designed the jumps in its terrain park in a manner that did not allow for a safe landing area and forced jumpers into the trees along the side of the terrain park.

A terrain park is a series of features, ideally in a confined, protected area of a ski hill, with multiple jumps, rails, pipes, and other elements for performing. Terrain parks have their own warning signs designed by the National Ski Area Association (NSAA) and skier etiquette. You raise your hand if you are going to enter the feature next.

This court found that the Pennsylvania Skier Responsibility Act created a two-part test to determine whether the injured party assumed the risks of skiing outlined in the statute:

We must determine if (1) the plaintiff was engaged in the sport of downhill skiing, and (2) the injury arose from an inherent risk to the sport of skiing

The court found the first test was easy; the plaintiff, G. B., was snowboarding, which was defined as skiing under the statute. The second part of the test was whether the acts the plaintiff alleged fell within the risks assumed by skiers under the Pennsylvania Skier Responsibility Act, specifically § 7102(c) provides:

(c) Downhill skiing.

(1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of downhill skiing.

(2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and (a.1).

(c.1) Savings provisions. –(Unconstitutional).

(c.2) Savings provisions. –Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.

(d) Definitions. –As used in this section the following words and phrases shall have the meanings given to them in this subsection:

“Defendant or defendants.” –Includes impleaded defendants.

“Off-road vehicle.” –A motorized vehicle that is used off-road for sport or recreation. The term includes snowmobiles, all-terrain vehicles, motorcycles and four-wheel drive vehicles.

“Off-road vehicle riding area.” –Any area or facility providing recreational activities for off-road vehicles.

“Off-road vehicle riding area operator.” –A person or organization owning or having operational responsibility for any off-road vehicle riding area. The term includes:

(1) Agencies and political subdivisions of this Commonwealth.

(2) Authorities created by political subdivisions.

(3) Private companies.

Under the Act, Pennsylvania courts have found that ski areas have no duty to protect skiers (and snowboarders) from inherent risks, as expanded by the Act.

The plaintiff's expert argued that the jumps in the terrain park were not designed according to industry standards established by the National Ski Area Association's Freestyle Terrain Resource Guide. The guide was developed by the NSAA with the help of ski areas, but not as a binding standard. The NSAA is very specific in its work, and its guides are not created as standards.

The court found that even if the jumps were not in accordance with the guide, the risks remained inherent in skiing. Pennsylvania courts have interpreted the Act to include features, buildings, and structures created by the ski area as inherent risks of skiing: “a ski resort has no duty to place a jump in a way that minimizes the potential for snowboarders to lose control.”

Contrast the decision in *Birl*: under that interpretation, even a building constructed by a ski area and located at the bottom of a run could be considered an inherent risk of skiing under the Pennsylvania Skier Responsibility Act. Yet in *Lin*, the building and its construction were potentially grossly negligent, exposing the ski area to liability.

What is a ski area in Pennsylvania supposed to do? For the plaintiff, it is an easy decision: create jurisdictional issues and file in federal court. If this becomes the norm, a statute intended to apply uniformly to skiers and snowboarders in Pennsylvania may effectively apply differently depending on where the case is filed. Yahoo—more tourists may come to ski in Pennsylvania because it is easier to sue.

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Articles

Say It Three Times Out Loud: Cutting Women's Sports Can Trigger Title IX Violations

By Ellen J. Staurowsky, Ed.D., Senior Writer and Professor, Sports Media (retired), Ithaca College, staurows@ithaca.edu

In *Dodd et al. v. Marshall University*, women athletes who competed on the swim and dive team contended that the University violated their civil rights under Title IX of the Education Amendments Act of 1972 by cutting their sport, a decision intended to go into effect in June of 2026. Following a letter from the law firm Bailey Glasser challenging the wisdom of that decision, a subsequent legal complaint filed by 15 members of the team, an online petition and social media campaign stirring public opposition to the decision, and the introduction of a bill in the West Virginia State House (SB 502 “Women’s Collegiate Sport Protection Act”) to protect women’s Olympic sports from being cut by university administrators, the University relented and reversed course.

Background

Marshall University officials initially attempted to justify the decision to cut the team by explaining that they were in the midst of implementing a plan to align their athletic department with Title IX requirements by replacing women’s swimming and diving with a new women’s STUNT team and by adding more spots for women on existing teams. In public statements from the president and the athletic director, the University asserted that the proposed plan would expand opportunities for women athletes while relieving the athletic department of the financial burden of dealing with necessary infrastructure upgrades to the Fitch Natatorium including the swimming pool, locker rooms, aquatic systems, and athletic training area. They effectively argued that the athletic department did not have the money to provide a practice and competition facility that met NCAA Division I swimming and diving standards nor the resources to carry what had been within their athletic department, an “expensive” women’s sport.

Based on the University’s assessment, the \$819,000 used annually to support women’s swim and dive could better support more opportunities for women in the program through the addition of STUNT (which had a projected budget of roughly \$330,000) and the full use of roster sports on existing teams (Smith, 2026, starting at 2:03). According to President Brad Smith, the cutting of women’s swim and dive and addition of STUNT would save the athletic department over \$2 million over the span of three years while supporting an increase of more than 30 athletic participation opportunities for women athletes.

The contours of such a plan had not been publicly outlined by the department prior to the abrupt announcement. In the draft report of an external audit submitted by a Title IX consultant with a date of October 31, 2025, which was included in the appendices for the case, the University was cautioned that it was vulnerable in the area of offering equal athletic participation opportunities for women (Grant, 2025). Explaining Title IX’s three-part test to assess whether schools effectively accommodate the interests and abilities of athletes, the consultant noted that schools have one of three ways to achieve compliance in this area:

- Part 1 - Substantial Proportionality – A school can provide athletic opportunities to men and women athletes proportional to the representation of men and women in the undergraduate student population, OR
- Part 2 - History and Continuing Practice of Program Expansion - A school can demonstrate that they have a history and continuing practice of program expansion, meaning that typically women athletes as the underrepresented sex do not receive athletic opportunities at rates proportional to the enrollment of women students but the school has been systematically addressing the problem by expanding opportunities and growing programs for women consistently over the span of years, OR
- Part 3 - Effectively Accommodating the Interests and Abilities of Athletes – Should a school fail the first two parts of the test, the onus falls on the

school to demonstrate that the interests and abilities of women athletes on their campus have been effectively met and there is no need to offer more athletic opportunities.

Although it is clear in reading the draft report that Marshall was angling to make the case that it was meeting Title IX athletic participation requirements through the third part of the test, several red flags had been identified regarding the adequacy of Marshall's basic obligation to fulfill any part of the test. An examination of materials shared by the University with the consultant for the academic years 2023-2024, 2024-2025, and 2025-2026 led her to conclude that the University provided far fewer athletic opportunities for women, a gap that would have required the addition of several teams and roughly 210 athletic opportunities or some combination of adjusting the men's program downward while growing opportunities for women. A disproportional distribution of opportunities favoring men that exceeded their representation in the undergraduate student body by 15.6% signaled a failure to meet Part 1 (Substantial Proportionality) of the test (Grant, 2025).

In light of the fact that Marshall had not added a women's sport since 2002, which at the time was women's swimming and diving, and they had no plan in place to address the proportionality problem, they also could not demonstrate that they had a continuing practice of program expansion (Part 2 of the test). After delineating a number of factors to demonstrate whether a school complies with Part 3 of the test, that being Effectively Accommodating the Interests and Abilities of Athletes, the consultant determined (with some information pending at the time of the draft report) that Marshall "arguably" was in compliance under Part 3. She highlighted the fact that women students had not come forward to advocate for club sports and/or activities to be elevated to varsity status and that, in interviews with coaches and athletes, they did not bring up the issue of new sports for women. She did note that Marshall's conference, the Sunbelt Conference, offered a championship in Beach Volleyball, something not offered at Marshall. The consultant's determination regarding compliance with Part 3 was a tentative one, absent findings from a survey of interest that she was waiting to review.

There is no mention of adding women's sports or opportunities except in the theoretical within the draft report and nothing about adding the sport of STUNT while eliminating women's swim and dive. What does stand out, however, is a statement that reads that the elimination of women's teams, even if they might be reinstated in the future, presents a hurdle to argue that an athletic department has made an effort to expand opportunities for women athletes. Developing the logic further, she also points out the implication that if an athletic department cuts an existing, viable team it becomes difficult and essentially impossible to argue that the interests and abilities of women athletes were accommodated after such a cut.

The Plaintiffs argued that this was a clear case of violating Title IX (*Dodd et al. v. Marshall University*, 2026). The actions taken by Marshall administrators immediately violated Parts 2 and 3 of the tests when the institution knew and was on notice that it was grievously violating Part 1 of the test. The outcome here is similar to those achieved on behalf of women athlete plaintiffs at East Carolina University in 2021 (Associated Press, 2021); William & Mary in 2020 (Staurowsky, 2020), and others.

The Announcement That the Women Were Losing Their Team Took All of 2.5 Minutes

Those who operate in the higher education sphere, especially in this era, may empathize with and/or understand some of the logic behind an administrator's effort to address budget shortfalls with personnel and program cuts and the designation of certain capital projects like a costly facility renovation as low priority.

That said, athletic departments are typically the only departments on campuses that are sex segregated. Testing out the messaging used by administrators when explaining decisions to eliminate programs is crucial as are historical compliance patterns. According to the complaint the Marshall athletic director allegedly explained that the women's swim and dive team had been chosen because it was the "most expensive" sport and was the most "cuttable". That message was purportedly delivered to the team just prior to their conference championship in a meeting that lasted, according to the complaint, all of 2.5 minutes (*Dodd et al. v. Marshall*, 2026, p. 15).

The logic behind this begs the question what other women's sports were viewed as "cuttable", what the term "most expensive" means within the context of that athletic department and its budget, and what the implications would be if Marshall was permitted to implement that kind of logic (*Dodd et al. v. Marshall University*, 2026, p. 15). Theoretically, once women's swim and dive was eliminated and the program's resource allocations reset, there would still have been another women's team that was "the most expensive" and "cuttable". In effect, the cuts would potentially not end with one women's team. The accuracy of the statement itself and how the designation "most expensive" was arrived at also remains unanswered, as does the question of why turn to "the most expensive" women's sport to resolve budget pressures without considering "the most expensive men's sport"? If this kind of decision making was permitted to go unchallenged, it would set the budget priorities up for women's athletic programs to be cut where infrastructure costs become too great and allow schools to simply neglect the needs of women's sports, cutting them and replacing them with less costly alternatives.

An Open Question: Can Schools Stay Within Title IX Compliance Parameters While Cutting Women's Teams?

A legitimate question to ask is whether a school can safely remain Title IX compliant and reset budget priorities to best achieve solvent and sustainable athletic department budgets by cutting teams. Given that Title IX compliance is assessed on a case-by-case basis, there is no universal answer to that question. The question of course assumes that schools are Title IX compliant to begin with, and on that front, it is often not the case.

This case offers some insight, however, into how past neglect of Title IX considerations make it more difficult in the present to simply cut teams. Not only does the analysis demonstrate that Marshall had more than 50 years to come up with a plan to offer athletic opportunities to women athletes proportional to women's enrollment on campus, cutting a sport immediately triggers violations of the history and continuing practice of program expansion and effectively accommodating the interests and abilities of women athletes parts of the test. To put it in a different way, to cut a

women's team under these circumstances attempts to rewrite history, denying those women athletes on a viable team who competed at the NCAA Division I level ever existed in order to balance a budget. Claiming financial hardship in the face of sex discrimination is an admission that the school did little about it for years [it was notable that in the Grant (2025) report the lockers were described as "rotting", ventilation was poor, showers did not work"]. It becomes harder to argue that substituting one women's sport with a less expensive one achieves the goal of equal treatment because the existing sport is reality (women's swim and dive); the new sport (STUNT) merely represents the possibility of greater opportunity that will take several years to realize when growing a new program with no guarantee that the full projection of those new opportunities will come to fruition. Thus, women's interests actually suffer under this kind of plan.

If the case was not settled and had moved forward Marshall's reliance on Part 3 of the Three-Part Test to establish Title IX compliance as alluded to in the Title IX draft report from October of 2025 may have been problematic (Grant, 2026). In that report, the factors used to suggest they were "arguably" in compliance by effectively accommodating the interests and abilities of women athletes on campus cited a lack of advocacy for new sports by athletes and coaches interviewed by the consultant and an absence of effort on the part of current students involved in club sports to seek varsity status. Precarity is created here because athletes and coaches in existing programs are already operating with constrained resources. They are not likely to advocate for programs that are going to compete for those constrained resources. The question itself sets up a conflict of interest. Further, in this case, the information in the draft report conflicts with the university's decision to move forward with adding the sport of STUNT. If Marshall was using the logic that they were in compliance with Part 3 of the Three-Part Text because they were effectively accommodating the existing interests and abilities of women athletes on campus by virtue that none of them advocated for new teams, then why add a sport that at least on the surface has no advocates and no support within the athletic department and on campus?

A takeaway from this case is that a school that is not in compliance with Title IX or is thinly complying with

Title IX faces challenges in restructuring their athletic program by cutting women's programs. Such cuts often trigger other violations and increase scrutiny on the way in which decisions regarding equal treatment within athletic departments are considered and/or ignored. These issues may occur within the college sport landscape but should not be blamed on other issues, for example, like the *House Settlement*.

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Trading the Score: Are Kalshi's Sports Event Contracts Markets or Mere Bets?

By Andres Castillo, of Saul Ewing

What happens when an unstoppable force meets an immovable object? An answer to that question—at least pertaining to Kalshi and whether the sports event contracts it offers are governed by federal derivatives law or state gambling law—is steadily approaching.

Kalshi is a web-based prediction market platform that allows customers to trade contracts based on whether specific events will happen in the future. As Kalshi puts it, customers can “trade on anything.” But the evidence shows that Kalshi customers are mostly interested in trading contracts based on whether certain *sports* events will occur. Since Kalshi's inception in 2021, customers have traded \$16.8 billion in sports event contracts, compared to \$4.9 billion in other contracts. Naturally, state gaming regulators came

knocking and demanded that Kalshi comply with state gambling law or face civil and criminal liability.

Rather than comply with state gambling law, Kalshi has vigorously argued that its sports event contracts are “swaps” under the Commodity Exchange Act (CEA) and therefore subject to the exclusive federal jurisdiction of the Commodity Futures Trading Commission (“CFTC”). The CFTC publicly supported Kalshi's position and warned state regulators that it would defend this position. State gaming regulators disagree, arguing that the CEA does not apply to transactions like Kalshi's sports events contracts because they involve “gaming” under state law.

Kalshi and state regulators are now involved in various lawsuits across the country. Both have federal courts that agreed with their position, creating a circuit split on whether Kalshi's sports event contracts are subject to the CFTC's exclusive jurisdiction. Federal judges in Tennessee and New Jersey held that the sports event contracts are “swaps” under the CEA, while judges in Ohio and Maryland held that they are not “swaps” and that the CEA was not intended to preempt state gambling law.

Because of this circuit split, Kalshi can offer its platform in some states without having to comply with state gambling law and in other states, Kalshi must comply with state gambling law in order to offer its platform. This creates uncertainty for all involved—Kalshi, state regulators, the CFTC, and Kalshi customers. The question now is whether Congress or the United State Supreme Court will be the unstoppable force that bursts the immovable object that is Kalshi's status under the law when offering sports event contracts.

How Did We Get Here?

In 2020, Kalshi applied for and was approved by the CFTC as a “Designated Contract Maker” (DCM), which allows Kalshi to create and offer event contracts to the public—that is, contracts based on whether specific events will happen in the future. The CFTC can review and prohibit certain types of event contracts that are contrary to the public interest, including those that involve “gaming” under state law. In late January 2025, Kalshi created and offered sports event contracts for the first time. And since then, the CFTC has not taken any action against Kalshi for its sports event contracts.

In April 2025, several states, including Nevada, New Jersey, and Maryland, sent cease-and-desist letters to Kalshi, demanding that the platform comply with state gambling law or face civil and criminal liability. In response, Kalshi sued Nevada, New Jersey, and Maryland and requested a preliminary injunction, arguing that as an approved DCM, it is subject to the CFTC's exclusive jurisdiction. The states argued that the CEA does not apply to sports events contracts because they involve "gaming" under state law, and was not intended to preempt state gambling law.

The Nevada and New Jersey federal courts sided with Kalshi. The Nevada court held that the CEA granted the CFTC exclusive jurisdiction over transactions involving DCMs, and the New Jersey court held that sports events contracts fall within the CFTC's exclusive jurisdiction. On the other hand, the Maryland federal court sided with state regulators, holding that the CEA was not intended to preempt state gambling law and that compliance with federal derivatives law and state gambling law was possible.

The New Jersey and Maryland decisions are currently on appeal to the Third Circuit and Fourth Circuit, respectively. Interestingly, the Nevada court reversed course and sided with state regulators. The court held that the CEA was not intended to preempt state gambling law and that Kalshi's sports event contracts closely resembled traditional sportsbook bets and are an attempt to evade state gambling law. Kalshi appealed this decision to the Ninth Circuit and was denied.

Kalshi and state regulators are also involved in similar lawsuits in Ohio, Tennessee, Massachusetts, Utah, and Iowa. The Ohio federal court and Massachusetts state court sided with state regulators, while the Tennessee federal court agreed with Kalshi. The Ohio and Massachusetts courts held that Kalshi's sports event contracts are not "swaps" under the CEA and that the CEA was not intended to preempt state gambling law. On the other hand, the Tennessee court held that the sports event contracts are "swaps" and that compliance with federal derivatives law and state gambling law was impossible. The Utah and Iowa federal courts have not issued a decision yet given that Kalshi recently sued each state on February 23 and March 11, respectively.

What is Next?

Assuming that neither Kalshi nor state regulators surrender, Kalshi's status under the law when offering sports event contracts can be settled in one of two ways. First, federal and state courts will continue to issue decisions until the United States Supreme Court grants certiorari and settles the matter. Or second, federal and state courts will continue to issue decisions until Congress adopts legislation that settles the matter. Until either happens, Kalshi would be offered only in states that have not opined on the matter or where the courts sided with Kalshi's position, and the current cases between Kalshi and state regulators would proceed.

If history tells us anything though, it is that the Supreme Court or Congress will likely not settle the matter anytime soon. Therefore, Kalshi and state regulators must decide whether, and to what extent, they should continue to litigate the matter. Current cases will likely proceed in order for Kalshi and state regulators to obtain their requested relief and force the Supreme Court or Congress to take action. Meanwhile, Kalshi or other state regulators not involved in litigation with Kalshi could file a lawsuit in a state that has not opined on the matter in order for the federal or state court to decide on the matter and the Supreme Court or Congress to take action swiftly.

The cases between Kalshi and state regulators present five issues that must be resolved in order to fully settle the matter: (1) whether the CEA granted the CFTC exclusive jurisdiction over transactions involving DCMs; (2) whether Kalshi's sports event contracts are "swaps" under the CEA and therefore subject to the CFTC's exclusive jurisdiction; (3) whether the sports events contracts involve "gaming" under state law and are therefore excluded under the CEA; (4) whether the CEA intended to preempt state gambling law; and (5) whether compliance with federal derivatives law and state gambling law is possible. Whoever the unstoppable force is, these questions must be answered to settle Kalshi's status under the law when offering sports event contracts.

Who Should be Paying Attention?

As a general matter, anyone who could be affected by or included as part of a Kalshi sports event contract or anyone who trades a sports event contract should pay

attention to the cases between Kalshi and state regulators. The following three groups should pay especially close attention:

1. Professional, Collegiate, eSports, and Video Game Leagues or Competitions

Professional, collegiate, eSports, and video game leagues or competitions should consider how the cases between Kalshi and state regulators affect their (i) integrity rules, (ii) data licensing, (iii) revenue models, and (iv) player monetization and adapt accordingly. First and foremost, leagues or competitions must ensure that athletes and participants are strictly prohibited from using platforms like Kalshi to trade sports events contracts. Even if these contracts are not considered gambling in the legal sense, they are based on whether certain sports events will occur. And to ensure and maintain competitive integrity, leagues and competitions must view such conduct as gambling and prohibit use of it by athletes and participants.

2. Second, leagues or competitions should partner with platforms like Kalshi to maximize revenue and increase fan engagement. Unless these platforms are financially crippled by the application of state gambling laws, they will likely still operate and continue to attract high trade volume, regardless of whether sports event contracts are governed by federal derivatives law or state gambling law. Leagues or competitions therefore cannot remain on the bench and must get in the game and capitalize on a tremendous opportunity to maximize revenue and increase fan engagement. Athletes and participants would in turn benefit significantly.

3. Other Prediction Market Platforms

Other prediction market platforms like Kalshi should review the court holdings in the cases between Kalshi and state regulators and adapt accordingly. In fact, Polymarket and Robinhood also offer sports event contracts and are parties to current lawsuits in Michigan, California, and Wisconsin. These platforms must decide whether they want to join the fight or not offer sports events contracts. The former option would allow a platform to operate without uncertainty and force the Supreme Court or Congress to take action. The latter option would allow a platform to altogether

avoid the matter and continue operation without state intervention.

Prediction Market Customers

Customers that use prediction markets to trade sports event contracts should understand that in states that have not opined on the matter or where the courts sided with Kalshi's position, state gambling law is inapplicable. Compared to federal derivatives law (which focuses more on market efficiency), state gambling law provides a comprehensive regulatory scheme designed to protect consumers from improper and illegal betting practices. State gambling laws typically require entities to obtain a license with the state and abide by certain



Andres Castillo

restrictions, such as age, location, and payment type limitations. Therefore, Kalshi would have to comply with the state gambling law of any state it wished to offer sports event contracts in. Under federal derivatives law however, Kalshi could offer sports event contracts anywhere in the country regardless of state gambling laws.

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Skillman Guides BSK as It Assists Colleges and Universities Through the Turmoil that Is Collegiate Athletics

Bond Schoeneck & King (BSK) is a preeminent law firm in collegiate athletics, where its reputation quite naturally precedes itself. That reputation was decades in the making, nurtured primarily by two high-profile sports lawyers – Mike Glazier and Rick Evrard.



Kyle Skillman

And while those two attorneys have stepped back from every day legal work (with Glazier retiring to consultant and Evrard moving to of counsel), the firm hasn't missed a beat.

That's primarily because of the emergence of Kyle Skillman, a partner at BSK, who has assumed a leadership role. Skillman has extensive experience advising on NCAA governance, Title IX compliance, and the development of NIL policies at a high level.

At a time when athletic programs and institutions face increasing scrutiny over athlete welfare, compensation, and organizational oversight, Skillman brings a practical, solutions-oriented approach to complex legal challenges.

What follows is a short interview with Skillman about emerging trends, compliance pressures, and

what lies ahead for college sports administrators and their legal advisors.

Question: Tell us about how you got your start in sports law?

Answer: My start in sports law was with Bond. As I slowly crossed off areas of law school that did not interest me (e.g. family law, immigration, tax), I sought a return to the world I enjoyed as a former DI student-athlete. Fortunately, Bond's Collegiate Sports Practice was in nearby Overland Park and had an opening for a summer clerk. I started as an hourly clerk in spring 2003 and never left.

Q: Tell us about why you have stayed at BSK all these years?

A: Initially, I stayed with the firm because it presented a unique opportunity for me to develop and sharpen a variety of skills: analyst, investigator, strategist and lawyer. Rick and Mike Glazier pushed me in all of those areas. Over time – with increased client exposure and a lot of attention from Rick, Mike and Steve Morgan – I found a very busy niche in which I get the privilege of solving problems every day with college athletics administrators, campus counsel, and NCAA staff who trust our expertise.

Q: What influence has Rick and Mike had on your career?

A: Rick and Mike had distinct, profound impacts on my career. Rick was a mentor in developing and maintaining relationships, managing client expectations, hustling, and working collaboratively with NCAA staff to resolve issues in the best interests of a client. Rick is a “people person” whose positive outlook helps clients see problems clearly, and his dedication to clients 24/7/365 is embedded in my approach to the business. Rick always advanced the message that the NCAA is a voluntary membership organization with rules that derive from its member institutions. Those are good reminders today, even as constant litigation shapes the collegiate model. My ability to connect with people, develop trust, and effectively counsel clients corner-to-corner/coast-to-coast was driven by working with Rick.

Mike demanded diligence, critical-thinking, organization and precision – the skills necessary to stay on top as a lawyer, industry leader and practice manager.

Those fundamentals are rooted in the reputation and success of our practice and remain uncompromised. Steve had similar expectations, coupled with an unmatched knowledge of the origin, intent and intricacy of NCAA rules and governance structure.

Q: What are the plans for the practice group and what trends are you tracking for 2026?

A: Our focus for 2026 is to continue working diligently to resolve clients' NCAA-related issues and grow the practice by adapting to a somewhat changing landscape. In addition to the steady stream of NCAA enforcement and eligibility matters, we anticipate more of our attention will shift to matters involving the College Sports Commission as that entity builds out its staff and begins enforcement operations relating to NIL and revenue sharing. Other trends include tracking/reporting/resolving impermissible contacts ("tampering"), academic misconduct, and an increasing number of sports wagering/eligibility cases.

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Sports Betting Meets March Madness: Federal CFTC Scrutiny to Impact College Sports

By Artie McConnell and Janine Anthony Bowen, of Baker Hostetler

Key Takeaways

- College sports face heightened insider information risk given the sheer number of people who possess material, nonpublic information or have influence over game outcomes, placing collegiate programs squarely within the enforcement cross-hairs as prediction market scrutiny expands.
- Kalshi's recent bans and fines underscore that Commodity Futures Trading Commission (CFTC) regulated prediction markets now apply full federal anti-fraud and insider trading standards, including in sports related markets.

Prediction markets (i.e., platforms where people can bet on the outcome of future events) have moved rapidly from the periphery of finance into the regulatory mainstream. This week, that shift became unmistakable when Kalshi – a CFTC-regulated prediction

market exchange – publicly announced bans and financial penalties against two traders for betting based on insider information. The actions, which Kalshi voluntarily reported to the CFTC, are among the first high-profile insider trading enforcement matters in the prediction market space.

The CFTC actions carry important implications for sports, particularly college athletics, where nonpublic information is widespread and compliance regimes are still evolving.

The Kalshi Enforcement Actions

Kalshi announced disciplinary actions against two individuals: a political candidate who traded contracts tied to the outcome of his own election campaign (in violation of exchange rules prohibiting trading in events the trader can directly influence) and an employee of a major media brand who traded on contracts linked to content produced by his employer, allegedly using advance, nonpublic information obtained through his job.

In both cases, Kalshi imposed trading bans on the individuals, required them to return their profits, assessed monetary penalties and reported the matters to the CFTC. The CFTC issued an advisory after Kalshi reported the matters, emphasizing that prediction markets are fully subject to federal anti-fraud and anti-manipulation authority, including prohibitions on insider trading under the Commodity Exchange Act and CFTC Rule 180.1.

While neither case involved sports, both Kalshi and the CFTC explicitly stated that sports-related markets pose heightened insider trading risk, because individuals close to teams or players may possess material nonpublic information before it becomes public.

Why This Matters for College Sports

Prediction markets are not simply another way to bet on sports. They are regulated as federal derivatives exchanges, not as state-licensed sportsbooks, meaning that:

- Trading misconduct is analyzed as market fraud, not merely as a gaming violation.
- Enforcement authority rests with the CFTC – with potential referral to other federal agencies – and not with state agencies.
- Individual bettors can be liable, even when wa-

gers are small, if the bettor possessed or misused insider information.

Of course, college athletics generate abundant insider information. Compared with professional sports, college programs involve a broader and less formalized universe of potential “insiders,” including:

- Student-athletes, their roommates and their friends
- Coaches and graduate assistants
- Athletic trainers and medical staff
- Academic advisers and compliance personnel
- Name, image and likeness (NIL) collective and other third-party entities supporting the funding of student-athletes, officers and consultants whose decisions impact player participation
- NIL agents

These individuals routinely have advance knowledge of information – such as injuries, eligibility decisions, suspensions, depth-chart changes or coaching decisions – that would likely be considered material in a prediction market. Trading while merely knowing the information, or sharing it with others who trade, fits squarely within Kalshi’s and the CFTC’s definition of insider trading, potentially leading to significant monetary penalties (up to three times the profit gained, or loss avoided) and other civil penalties.

Recognizing this, in January, the NCAA explicitly asked the CFTC to stop prediction markets from offering trades on college sports until more safeguards are in place.^[1] In a letter, NCAA President Charlie Baker wrote, “I implore you to suspend collegiate sport prediction markets until a more robust system with appropriate safeguards is in place.” Baker identified several areas where prediction markets need additional safeguards, such as age restrictions, advertising restrictions, integrity monitoring, restrictions on prop bets, harm reduction resources and anti-harassment measures. Baker continued, “So-called prediction markets are offering what anyone can see is unregulated betting on college games ... we need federal regulators to stabilize this market.”

With the CFTC’s recent action, Baker may have gotten his wish.

How This Interacts with NCAA Rules and State and Federal Statutes

These federal developments do not replace existing prohibitions; they layer on top of them. In other words, for college athletics, this means that trading on team- or player-related outcomes may raise exposure from yet another government agency, not just the NCAA.

The NCAA rules already bar athletes and staff from betting on college sports, and many states criminalize certain forms of athlete or insider wagering. Of course, the Department of Justice recently showed that federal criminal statutes can also be applied to insider betting schemes on college athletics.

On Jan. 15, federal prosecutors in the Eastern District of Pennsylvania unsealed a sweeping indictment^[2] charging 26 individuals – including current and former NCAA Division I men’s basketball players across at least 17 programs – with participating in an international point-shaving and bribery scheme spanning both NCAA and Chinese Basketball Association games. The alleged conspiracy targeted more than 29 games between 2022 and 2025 and cash payments to athletes ranging from \$10,000 to \$30,000 per game. Athletes allegedly underperformed so bettors could profit from manipulated point spreads. Federal authorities described the operation as a significant corruption of college athletics, involving recruiters, former players and professional gamblers who coordinated wagers, coached athletes on how to avoid covering spreads and, in some instances, continued the scheme even after player transfers between schools. The indictment highlighted the breadth of insider exposure facing college programs and how the combination of digital evidence, expanded legal sports betting and increased government focus is rapidly accelerating enforcement risk across college athletics.

The recent Kalshi action and prediction market enforcement by the CFTC adds an additional, federal anti-fraud overlay, with potential consequences including disgorgement, market bans and regulatory investigations. Of course, even absent a finding of wrongdoing, universities may face reputational harm or investigative scrutiny if athletes or affiliated individuals are implicated.

Conclusion

The Kalshi actions underscore that regulators view sports-related information as market-moving data, not merely as an integrity of competition issue. The CFTC can now be added to the list of entities, both governmental and nongovernmental, that will scrutinize sports betting.

For college athletics – where insider information is plentiful and compliance frameworks are still catching up – the risk is not hypothetical. Institutions should take this issue seriously and not treat prediction markets as a niche or novelty product, or they may find themselves unprepared for the regulatory attention now taking shape.

For further discussion on the information discussed in this article, contact Artie McConnell amcconnell@bakerlaw.com or Janine Anthony Bowen jbowen@bakerlaw.com.

Footnotes

[1] Letter from Charles Baker, NCAA president, to Michael S.

Selig, CFTC chairman, *available at* https://ncaaorg.s3.amazonaws.com/ncaa/wagering/2026NCAA_CFTCLetter.pdf.

[2] Department of Justice Press Release, “26 People Charged in Alleged Bribery and Point-Shaving Scheme to Fix NCAA, CBA Men’s Basketball Games,” Jan. 15, 2026, *available at* <https://www.justice.gov/usao-edpa/pr/26-people-charged-alleged-bribery-and-point-shaving-scheme-fix-ncaa-cba-mens>.

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Flores Is Back in the Game against NFL. Now What?

By Christopher R. Deubert, Senior Writer

After a tortuous four years of litigation, coach Brian Flores and his fellow plaintiff coaches have prevailed in their arguments that they should not be required to arbitrate their claims of racial discrimination against the NFL and certain its teams before NFL Commissioner Roger Goodell or his designee. The coaches’ claims will instead proceed in federal court. Now the question turns to the merits of their case.

The longest yard

In February 2022, Flores, now the Minnesota Vikings defensive coordinator, filed suit after he was

terminated as the head coach of the Miami Dolphins and was not hired for the same position with the New York Giants, Denver Broncos, or Houston Texans. Flores seeks to represent a class of Black coaches and executives he contends were similarly discriminated against and has been joined in his action by two other Black coaches, Steve Wilks and Ray Horton, who are asserting similar claims against their former employers, the Arizona Cardinals and Tennessee Titans.

From there, the case has had a complex procedural history. In March 2023, the Southern District of New York issued a **split decision** on the NFL’s motion to compel arbitration.

Then, in an August 2025 decision, the Second Circuit **affirmed the lower court’s rulings**. Nevertheless, the Court generally rejected the NFL’s arbitration process as applied to Flores because he had to submit his claims to Commissioner Goodell, the NFL’s principal executive. Although recognizing that courts generally defer to arbitration, the Court found that the NFL arbitration process “fails to bear even a passing resemblance to traditional arbitral practice,” “is unworthy even of the name of arbitration,” and therefore is deserving of no protection.

Next, on remand, the coaches requested the District Court to reconsider its prior ruling that their claims against the Dolphins, Titans, and Cardinals (and related claims against the NFL) had to be arbitrated. In light of the Second Circuit’s decision, the district court agreed in a February 13, 2026 order, returning the entire case to the Court’s jurisdiction. In considering whether the NFL’s process qualified as an arbitration, the Court noted that “rock-paper-scissors” is a dispute resolution method, but that does not make it an arbitration protected by the Federal Arbitration Act.

The teams have now moved for reconsideration of that order. And the NFL has thrown a **Hail Mary to the Supreme Court** seeking review of the Second Circuit’s decision.

Decided on the field of play

Barring an unexpected legal ruling, the case can now proceed in earnest. Flores’ case was initially predicated on a claim of intentional racial discrimination under Section 1981, a Reconstruction-era law, as well as state laws against discrimination and retaliation.

After having completed the administrative filing requirement with the Equal Employment Opportunity Commission, on March 4, 2026, the coaches filed a Second Amended Complaint which added claims under Title VII of the Civil Rights Act. The significance of that addition is that Title VII permits claims for disparate impact, a lower bar than intentionality. Here, that means that the coaches could prevail if they can show that a race-neutral policy or practice by the NFL and its clubs nevertheless has a disparate impact on Black coaches and that either the policy or practice is not a business necessity or that a less discriminatory alternative exists.

The coaches' claims initially seem questionable. Each individual NFL club has its own hiring policies and practices, contrary to the coaches' claims that there is some problematic league-wide policy or practice. Further to that point, the NFL is among the most competitive industries in the country, and thus the idea that a club would make a hiring decision based on race (rather than whether it will help the club win) is dubious.

That said, NFL club decision-makers could of course have fallen susceptible to various unconscious biases that negatively affected the fairness of their hiring processes. Moreover, there is useful academic commentary explaining why **competition does not always fix or prevent discrimination**.

Next, of course, the NFL's only intentional league-wide policy or practice on the issues raised in the case is designed to prevent the very discrimination about which the coaches complain. The Rooney Rule has been in place since 2003 for the express purpose of promoting more minorities as heading coaching candidates (see [here](#) for an excellent history and analysis of the Rule by Professor Jeremi Duru). In fact, the Rule was borne out of the threat of litigation similar to the present action.

The Rule has undergone multiple iterations over time but generally has required that a racial minority be interviewed for any head coach or general manager position. The Rule's success has ebbed and flowed. At the start of the 2024 season, nine head coaches were minorities. However, of the ten head coaching vacancies filled during or after the 2025 season, none were by Black coaches.

Nevertheless, despite the Rule's mixed and uncertain success, it should legally count in the NFL's favor on the coaches' claims.

There are also grounds for skepticism on any claim that Flores was terminated by the Dolphins based on his race. For one, Flores was replaced by Mike McDaniel, who identifies as biracial. More substantively, Dolphins quarterback Tua Tagovailoa had **harsh words** about Flores' coaching style, an opinion shared by his former colleague Ryan Fitzpatrick, who described Flores as "dictator."

Finally, class certification appears unlikely. There does not seem to be a sufficiently large population of individuals subject to the same problematic policy or practice for the case to proceed on that basis.

Time to take a knee?

Despite the NFL's apparent strong legal and factual defenses, it certainly does not want to go through the process required for their adjudication. The coaches will soon begin seeking intrusive discovery into NFL policies and practices on hiring and race, before likely taking depositions from some of the league's most important figures, including the Commissioner and probably several owners (starting with the Dolphins' Stephen Ross).

Then, if that process does not already air too much of the NFL's dirty laundry, even more would be exposed as part of a motion for summary judgment, let alone a public jury trial.

Consequently, one would expect the NFL to try to find a way to settle the case. The economic damages could be substantial given the coaches' high salaries. But monetary damages do not seem to be the coaches' primary motivation. Instead, they are likely seeking lasting changes to the NFL's hiring policies and practices.

Deubert is Senior Counsel at Constangy, Brooks, Smith & Prophete LLP

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The Football Governance Act 2025: A Catalyst for Receivables Financing?

By Alex Schaafsma, of Birketts

In recent years, the financial landscape of English football has been shifting away from traditional lending streams, and the Football Governance Act 2025 (“FGA”) looks set to accelerate that trend.

The FGA, which received Royal Assent on 21 July 2025 and is coming into force incrementally, is intended to strengthen the sustainability and transparency of English football. Introduced with a view to improve the financial stability of clubs and to bring greater transparency of ownership structures, the FGA marks a significant regulatory overhaul.

The FGA establishes an Independent Football Regulator (“IFR”) and a mandatory licensing regime for clubs across the top five tiers of the men’s professional game.¹ The IFR’s statutory objectives include:

- (a) to protect and promote the financial soundness of regulated clubs;
- (b) to protect and promote the financial resilience of English football; and
- (c) to safeguard the heritage of English football.

Section 46: IFR approval for home ground security

From a banking and finance perspective, section 46 of the FGA is particularly noteworthy. In broad terms, once section 46 is in force, clubs will need to seek IFR approval if they intend to dispose of, or create a security interest over, their home ground.² For the 116 regulated clubs that fall within its remit, the IFR will only grant approval if it is satisfied that the financial sustainability of the club would not be undermined by the proposed disposal or security.

The IFR will have the ability to refuse, revoke or attach conditions to licences for non-compliance of the

¹ At present, the statutory scope of the FGA is limited to the men’s professional pyramid and does not extend to the women’s game, although future regulatory expansion in this area remains a live policy discussion.

² Section 46(1) FGA 2025. The provisions of the FGA are being introduced incrementally, and statutory instruments have brought certain parts of the FGA into force. At the time of writing/publication, section 46 has not yet come into effect. Section 46 is expected to be brought into force alongside the IFR licensing regime later in 2026, but there is currently no confirmed or published commencement date.

approval process. While the IFR’s approach to exercising these powers remains to be seen, both clubs and lenders will need to factor this into any future financing arrangements.

The wider licensing regime

Beyond section 46, the FGA introduces a mandatory licensing regime for clubs in the top five tiers. To obtain and maintain an IFR licence, clubs must demonstrate sound financial planning, governance structures, and fan engagement. These requirements may influence lenders’ credit assessments and could lead to lenders imposing stricter controls on clubs in their debt facilities to ensure compliance with the licensing regime.

Practical implications for lenders and borrowers

IFR approval for stadium-related security creates risk for lenders who view the club’s home ground as a valuable asset that can be used as collateral. Clubs will need robust financial plans, and lenders will face enhanced due diligence obligations - both of which can increase cost and timing pressures. The government’s impact assessment estimated familiarisation costs to regulated clubs of £400,000 - £1.2 million and annual compliance costs of between £17.9 million and £35.8 million across the 116 clubs, highlighting the scale of the regulatory burden.

A lender taking (or relying on) stadium security will also want comfort that the club is able to grant that security without triggering licensing consequences. Once fully operational, it is reasonable to expect IFR approval to become an explicit condition precedent for any deal involving security over a home ground interest.

Football clubs operate in a uniquely volatile environment. Matchday revenues and income through broadcasting rights are seasonal and the inherent risk of relegation make cash flow critical. As financing arrangements are often an integral part of a club’s financial strategy, navigating the new requirements of the FGA will be an important factor in the selection of such financing arrangements going forward.

An alternative to traditional debt financing?

The question therefore arises: is there an alternative to traditional debt financing which may be less impacted by the FGA?

Receivables financing offers a potential solution.

Receivables financing is a financial arrangement that enables clubs to unlock immediate liquidity by selling rights to future income streams (at a discount) or borrowing against them. Transfer fees, parachute payments and sponsorship deals are often payable to clubs in several instalments. Through receivables financing, clubs can accelerate access to cash that would otherwise arrive over a number of years.

In a typical transfer scenario, the transfer fee is payable by the buying club to the selling club in multiple instalments. Receivables financing enables the selling club to assign its rights to the future income stream to a lender, with the lender paying the club an upfront amount at a discounted rate. The buying club would usually then be notified of the assignment, and payments of the transfer fee redirected to the lender, who would become the legal recipient of those payments.

While receivables financing is by no means a novel concept in football finance, this structure now presents an opportunity for clubs to alleviate some of the regulatory hurdles tied to stadium security and IFR scrutiny by using alternative collateral (an income stream) as security instead of physical assets such as the club's ground.

Regulation of receivables financing

It is worth noting that receivables financing is not free from regulatory oversight. Such arrangements are regulated by the Premier League and English Football League. For example, both leagues only permit the assignment of transfer fee instalments to bodies classified as "Financial Institutions."³ While this restriction applies to transfer-related receivables specifically, the underlying policy intent is to prevent assignments to potentially unregulated lenders. Clubs will also need to satisfy the IFR's broader financial sustainability requirements, which continue to apply to borrowing more generally through the licensing regime.

Conclusion

While the FGA seeks to protect and promote the sustainability of English football - a welcome introduction for many - for clubs and lenders, alternative financing strategies could soon take centre stage. In a sector where liquidity dictates success on and off the pitch,

receivables financing may emerge as an increasingly attractive option.

Please do get in touch with your usual contact in the [Banking & Finance Team](#) if you would like to discuss any of these issues in further detail.

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Practical Considerations in Selecting the Right Athlete Endorsement Partner

By Edward H. Schauder

For more than a century, companies have relied on athletes to build brand recognition and consumer trust. Today, athlete endorsements remain a billion-dollar segment of the marketing industry. Yet while the financial upside can be significant, so too are the legal, reputational, and operational risks.

From both the company's and the athlete's perspective, a successful endorsement relationship requires more than celebrity appeal. It demands strategic alignment, careful due diligence, and properly structured agreements.

When advising companies seeking an athlete spokesperson, the first step is clarity of purpose. Before approaching any athlete, a company should define what it is attempting to accomplish. Is the goal to penetrate a specific geographic market? Appeal to a particular demographic? Launch a new product category? Reinforce brand credibility? Without clearly articulated objectives, even a high-profile endorsement can fail to deliver measurable results.

Too often, companies focus on star power without assessing compatibility. An athlete may have name recognition, but does that athlete's public persona align with the company's values? Does the athlete already endorse or invest in competing products? Is the athlete under contract in a way that could create category conflicts? These questions must be answered before meaningful negotiations begin.

Financial realism is equally important. Companies sometimes commit substantial portions of their marketing budgets to endorsement fees, leaving insufficient capital to execute the campaign itself. A well-structured endorsement arrangement should fit within

³ Defined in 2025/26 EFL Regulations (Regulation 1.1) and Premier League Handbook 2025/26 (Rule A.1.109).

a broader marketing plan. In appropriate circumstances, creative compensation models — such as performance-based incentives or equity participation — can align incentives while managing risk.

Regulatory and league considerations must also be examined. In certain professional sports, the use of multiple active players in a single campaign may trigger group licensing rules that require negotiation through the applicable players association. Failure to recognize these requirements can delay or derail a campaign.

While active superstars often attract attention, retired athletes may present compelling alternatives. A respected retired player can offer authenticity, regional loyalty, and demographic alignment — frequently at a more sustainable cost structure. In many cases, the right endorsement partner is not the most famous athlete, but the most strategically aligned one.

From the athlete's perspective, endorsement opportunities must be evaluated with equal rigor. An athlete's name, image, and reputation represent core assets that extend far beyond any single contract. Associating with the wrong product or company can result in lasting reputational damage.

Athletes and their advisors must first review existing endorsement agreements and investment holdings to ensure no conflicts exist. Overlapping “exclusive” category deals have embarrassed both athletes and companies in the past and are almost always preventable through proper diligence.

Financial due diligence on the company is equally critical. If compensation involves installment payments, restricted stock, or equity interests, the athlete's representatives should evaluate the company's financial stability, capitalization, and leadership credibility. Where appropriate, payment protections such as escrow arrangements or personal guarantees may be advisable. Endorsement agreements should clearly define payment terms, termination rights, default provisions, exclusivity parameters, and performance obligations to reduce future disputes.

Product integrity presents another significant consideration, particularly in the context of food, beverage, or nutritional supplements. Athletes must ensure that products do not contain banned substances under league or governing body rules. Independent third-party testing and certification can provide important

safeguards. An athlete should never rely solely on a company's assurances when regulatory exposure could jeopardize a career.

Perhaps most important is authenticity. Consumers are increasingly sophisticated and quick to recognize insincere endorsements. The most effective partnerships arise when an athlete genuinely believes in and uses the product being promoted. When alignment exists between the athlete's identity and the brand's message, endorsements can create powerful and enduring relationships. When misalignment occurs, the damage can be immediate.

Athlete endorsement agreements sit at the intersection of marketing strategy, intellectual property rights, contract law, and risk management. For companies, thoughtful selection and disciplined structuring protect brand investments. For athletes, thorough diligence preserves reputation and long-term value.

With careful planning and experienced legal guidance, endorsement relationships can become mutually beneficial partnerships rather than avoidable liabilities.

Edward H. Schauder is Special Counsel at Nason Yeager. With more than 35 years of experience in corporate transactions and the sports and entertainment industries, he advises athletes, brands, and businesses on licensing, sponsorship, endorsement agreements, and complex commercial matters. Mr. Schauder is admitted in New York and counsels clients on matters involving New York and federal law.

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Stop saying the average NFL career is about three years

By Christopher R. Deubert, Senior Writer

News sources (reputable and otherwise) as well as academic and other publications regularly state that the average career in the NFL is about three years (e.g., [Associated Press](#), [Wall St. Journal](#), [Statista](#)). These reports often derive from statements made by the NFL Players Association (see [Reuters](#), [Washington Post](#), [ESPN](#), [Fox Sports](#)) and have become so ubiquitous as to have the appearance of settled fact. In reality, the articles are a circular loop of unreliable data.

The definitional questions

One of the earliest instances of this claim is found in a [2002 New York Times article](#) summarizing a recent NFLPA report as follows: “The players union studied team rosters from the 1987 to 1996 seasons, an average of 1,647 players a year, or about 16,000 player years. The study showed the average career of an N.F.L. player is 3.3 years.”

The NFLPA has reiterated this claim over the years (e.g., in [2011](#) and [2026](#)), without ever releasing any substantive explanation of its analysis. News reports then regurgitate these statements without examination.

Even putting aside the data’s age, there are several problems with the simplified characterizations of NFL playing careers, most of them definitional.

First, “average” is a vague term. We all remember (or should remember) the more specific statistical terminology of mean, median, and mode. While “average” is often understood to be the mean in everyday conversation, that is not always the case. Nor is it necessarily the most helpful or representative statistic, particularly without the context of the other two.

Second, who is an NFL player? The continuum here is harder than you might think ranging from: (a) an undrafted player who signs a contract but never makes the 53-man regular season roster; (b) a drafted player who signs a contract but never makes the 53-man regular season roster; (c) a practice squad player who never makes the 53-man roster; (d) a player who makes the 53-man roster but never makes the 46-man gameday roster; (e) a player who makes the 46-man gameday roster but never appears in a game; to (f) a player who makes the 46-man roster and appears in a game.

Third, what does it mean to play a year in the NFL? Here the NFL-NFLPA collective bargaining agreement has definitions potentially useful to this and the prior question.

Employment in the NFL has two important measuring sticks. A “Credited Season” is one in which a player “was on, or should have been on, full pay status for a total of three or more regular season games.” Importantly, the number of Credited Seasons is the benchmark used to determine eligibility for and compensation under various [benefits programs](#).

Next, an “Accrued Season” is one in which a player “was on, or should have been on, full pay status for a

total of six or more regular season games.” With some caveats not necessary for discussion here, players are typically on full pay status when they are on the 53-man regular season roster. Accrued Seasons are determinative of a player’s free agent rights – three provide a player with restricted free agency and four provide a player with unrestricted free agency (assuming their contracts are expired).

But which definition best represents what it means to play a year in the NFL? Neither the NFLPA nor any of the above news articles bothers to wrestle with any of these definitional questions.

With all of the above uncertainty said, the most egregious problem with the NFLPA’s analysis comes from the fact that it seemed to include in their calculation every player who ever signed a contract with an NFL club, regardless of whether they ever made the club’s regular season roster or played in an NFL regular season game, while also including players who were still active (and whose careers would thus exceed their current length).

As explained by the website [Sharp Football Analysis](#), the NFLPA redid its analysis prior to the 2010 season and counted anyone who was drafted in 2010 but had not yet had a chance to play in a game as having a career of 0 seasons. At the time, those players made up 19.5% of the NFL player population. Further, the NFLPA counted players who had just finished their first season as having a 1-year career, players who just finished their third season as having a 2-year career, and so on.

The NFL’s response

In 2011, the NFL formulated a response to the oft-cited NFLPA figure. [The league said](#) that for “players who entered the NFL between 1993 and 2002, the average career length for a player who is on his club’s opening-day roster as a rookie is 6.0 years.” Notably, this calculation likely makes the same mistake as the NFLPA’s by cutting short some players’ careers.

Otherwise, the only substantial criticism of the NFL data today would be that it is dated.

A more objective examination by Sharp Football Analysis in 2011 found that players who were drafted between 2002 and 2007 have a mean NFL career length of 5.0 years. While this analysis too does not

define a “year” of play, it is probably the most reliable statistic for measuring NFL player career length.

A perpetual fumble

Sports are awash in statistics, so it is somewhat amazing that no careful and reliable analysis of this question has been done. If there is one, neither I nor the regular reporters on the NFL have seen it. And yet both the NFL and NFLPA certainly possess the data to do such an analysis. The will thus appears lacking – particularly for the NFLPA, which has benefited from its perpetuation of bad math as a point of sympathy and bargaining leverage.

Deubert is Senior Counsel at Constangy, Brooks, Smith & Prophete LLP

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Hackney Publications Refreshes Its Directory of ‘100 Law Firms with Sports Law Practices You Need to Know About’

100lawfirms.com is a portal that recognizes excellence and serves as a resource for those in need of experienced and capable legal counsel in the sports law arena.

Hackney Publications announced today that it has published the sixth annual “**100 Law Firms with Sports Law Practices You Need to Know About**,” which is a directory that serves as a resource for those in the sports industry who need experienced and capable legal counsel.

As in years past, the law firms are listed alphabetically, a testament to the difficulty in ranking such firms. The other challenge, according to Holt Hackney – the founder of Hackney Publications and editor of Sports Litigation Alert, is that “more firms than ever are launching sports law practice groups.

“Law firms recognize the emerging opportunities in the sports industry, whether it’s the financial churn in professional sports ownership, or the Name, Image and Likeness phenomenon in collegiate athletics,” said Hackney. “The markers of this growth are all over the place.”

Hackney continued.

“We will continue to monitor this trend as we have done for almost three decades,” said Hackney, whose company is a partner of the influential Sports Lawyers Association as well as the Sports and Recreation Law Association and the Sports and Entertainment Risk Management Alliance (SERMA®).

“A special thanks to our readers, who have also been instrumental in deciding who should be on the list, and who shouldn’t. This year about ten firms were removed, while another ten were added.”

NOTABLE LAW FIRMS ON THE LIST

Among the notable firms included on the list are:

Barnes & Thornburg
 Boies Schiller Flexner LLP
 Constangy, Brooks, Smith & Prophete LLP
 Dennie Firm, PLLC
 Frieser Legal
 Greenspoon Marder LLP
 Herrick, Feinstein LLP
 Hogan Lovells
 Husch Blackwell
 Kroger, Gardis & Regas, LLP
 Lewis Brisbois
 Lightfoot Franklin & White, LLC
 Maher Legal Group
 PARRON LAW
 Power & Cronin LTD
 Ricci Tyrrell Johnson & Grey, PLLC
 Saul Ewing LLP
 Segal McCambridge Singer & Mahoney
 Sheppard
 Shumaker, Loop & Kendrick, LLP
 Spencer Fane LLP
 Thompson Coburn LLP

The portal has synergy with **Sports Law Expert**, a blog that features regular content on a daily basis as well as a directory of legal experts and their particular specialty. “This directory has been around for a decade and has led to new business for many attorneys as well as expert witness engagements for the academic community,” said Hackney.

About Hackney Publications

Hackney Publications is the nation’s leading publisher of sports law periodicals. The company was founded by journalist Holt Hackney. Hackney began his career

as a sportswriter, before taking on the then-nascent sports business beat at Financial World Magazine in the late 1980s. A few years later, Hackney started writing about the law, managing five legal newsletters for LRP Publications. In 1999, he founded Hackney Publications. Today, Hackney publishes or co-publishes 25 sports law periodicals, including **Sports Litigation Alert**, which publishes 24 times a year and features a searchable archive of approximately 6,000 articles and case summaries.

Not surprisingly, the Alert is used in more than 100 sports law classrooms any given semester, preparing students destined for a career in the sports industry, as well as the next generation of sports lawyers.

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Marquette Law School Adds Aaron Hernandez to National Sports Law Institute leadership

Aaron Hernandez, currently at Arizona State University's Sandra Day O'Connor College of Law, will join the faculty at Marquette University Law School as an associate professor of practice and director of the National Sports Law Institute.

Marquette's sports law program is led by Matt Mitten, professor of law, and Paul Anderson, associate professor of law and director of the Sports Law Program. A Marquette Law School alumnus, Hernandez will join the team this August.

In addition to teaching, Hernandez will have significant responsibility for the law school's engagement with the sports law community and the broader sports industry through conferences, continuing legal education programs, and new initiatives.

"The National Sports Law Institute has been a great asset for Marquette Law School under the leadership of Professors Matt Mitten and Paul Anderson," said Marquette Dean Joseph D. Kearney. "We welcome back Professor Hernandez as the NSLI approaches

its 40th anniversary. He is a dynamic and innovative leader, and this expansion of Marquette's sports law offerings will enrich our services for students and the broader community."

Hernandez will conclude his work this summer as executive director of the Allan "Bud" Selig Sports Law and Business Program at Arizona State. He previously served as associate director of football at the NCAA, where he specialized in stakeholder engagement in Division I Football Bowl Subdivision. His work included collaborating with coaches, athletic directors, administrators, and compliance officers, as well as conducting investigations into potential NCAA rules violations.

Hernandez graduated from Marquette University Law School in 2013, earning a certificate in sports law from the National Sports Law Institute. He is a member of the Wisconsin bar. He earned his undergraduate degree from the University of Notre Dame and received Marquette's Charles W. Mentkowski Sports Law Alumnus of the Year Award in 2019. He has also published in a number of law journals on legal issues in sports.

Founded in 1989, the National Sports Law Institute is part of Marquette University Law School. Its mission is to serve as a leading national educational and research institute focused on the legal, ethical, and business issues affecting amateur and professional sports. It provides educational opportunities for law students as well as current and future leaders in the sports industry.

Marquette Law School's Sports Law Program offers one of the nation's most comprehensive collections of sports law courses, along with student internships with sports organizations and opportunities to participate in the Marquette Sports Law Review and National Sports Law Moot Court team. The program is designed to provide students with both a theoretical and practical education in the governance and regulation of sports at the youth, high school, college, Olympic, international, and professional levels.

Hernandez noted: "I am, and always have been, a Marquette man. Marquette aims to make a difference in a world where too many people sit on the sidelines. That philosophy aligns with my personal values, including how sports shape our country.

"The gold standard for sports law in the United States is the National Sports Law Institute.



Aaron Hernandez

“Put simply, I am humbled and thrilled to accept this opportunity. Joining a winning organization with the chance to help lead it is a dream come true. Doing so at my alma mater, succeeding my mentor Matt Mitten, makes it even more meaningful. Paul Anderson will continue to lead the Sports Law Program, and together we will build on Marquette’s great tradition.

“I am grateful to Dean Joseph Kearney and his leadership team for their support throughout the recruitment process. Their endorsement means a great deal to me.

“I am also thankful to my family, friends, and mentors who supported me in making this decision.

“Finally, to my students: you have had a profound impact on my life and career. I will always be grateful for your trust and support, and I look forward to all we will accomplish together.”

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NCAA Panel Proposes Changes to Targeting Penalties for 2026 Season

By Holt Hackney

The NCAA Division I Football Rules Subcommittee has proposed a one-year trial to modify the penalty structure for targeting, a move that could ease one of the most debated rules in college football while maintaining a focus on player safety.

Under the proposal, a player disqualified for targeting for the first time in a season would not be required to miss the first half of the next game, regardless of when the foul occurs. Currently, players ejected for targeting must sit out the remainder of the game, and if the penalty occurs in the second half, they also miss the first half of the following game.

The proposal introduces a tiered penalty system. A player ejected for a second targeting offense in the same season would be required to miss the first half of the next game. A third offense would result in a suspension for the entire next game.

“This continues the evolution of our targeting rule and balances the important safety impact with an appropriate penalty structure,” said A.J. Edds, chair of the rules subcommittee and vice president of football administration for the Big Ten Conference. “We will closely monitor this one-year adjustment, and the

committee believes it is important to enhance the progressive penalty to ensure proper coaching and player education.”

The recommendation must be approved by the Division I Football Bowl Subdivision Oversight Committee and the Football Championship Subdivision Oversight Committee before it can take effect. The FBS committee is scheduled to review the proposal March 19, followed by the FCS committee on March 23.

If adopted, the change would mark another revision to the targeting rule, which has been adjusted multiple times since its introduction more than a decade ago.

The NCAA first implemented the targeting rule in 2008 as part of a broader effort to reduce dangerous hits to the head and neck. Initially, the penalty resulted in a 15-yard personal foul but did not include automatic ejection. In 2013, amid growing concern over concussions and long-term brain injuries, the NCAA added automatic disqualification for players who target defenseless opponents or initiate contact with the crown of the helmet.

Since then, the rule has been refined several times. Replay review was added to confirm or overturn targeting calls, and definitions of defenseless players and indicators of targeting have been clarified. In 2022, conferences were given the ability to appeal second-half targeting ejections to prevent players from missing time in subsequent games due to questionable calls.

Despite those changes, the penalty structure has remained controversial, particularly the automatic carry-over suspension for second-half fouls.

The proposed rule seeks to address those concerns by distinguishing between first-time and repeat offenders while still emphasizing accountability for dangerous play.

Under the proposal, conferences would also have the option to initiate an appeals process after a player’s second targeting offense of the season. Appeals could cover both the first and second offenses and would be reviewed by the NCAA national coordinator of football officials using video evidence. If a call is overturned, the player would not be required to miss the next game.

Supporters say the change would introduce greater proportionality into the rule without undermining its focus on safety.

Critics of the current system have long argued that the penalty can be overly severe, particularly in cases

where intent is unclear or incidental contact leads to ejection and suspension. However, the NCAA has maintained that the rule is designed to change player behavior and reduce high-risk contact.

The subcommittee plans to monitor the effects of the proposed changes during the 2026 season before determining whether to make them permanent.

If approved, the trial would represent another step in the NCAA's ongoing effort to balance player safety with competitive fairness in a sport that continues to confront the risks of head injuries.

For now, the proposal remains pending final approval, with potential changes expected to take effect for the 2026 college football season.

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Attorney General Sues Video Game Company, Claiming It Promotes Illegal Gambling to 'Young People'

By Holt Hackney

New York Attorney General Letitia James filed a lawsuit in early February against Valve Corporation, alleging the company promotes illegal gambling through popular video games that include slot machine-like features and attract millions of young users.

The complaint, announced Feb. 25, targets Valve's widely played titles, including Counter-Strike 2, Team Fortress 2, and Dota 2. According to the Office of the Attorney General (OAG), these games allow players to pay for the chance to win rare virtual items through in-game "loot boxes," a system the lawsuit claims violates New York gambling laws.

"Illegal gambling can be harmful and lead to serious addiction problems, especially for our young people," James said in a statement. "Valve has made billions of dollars by letting children and adults alike illegally gamble for the chance to win valuable virtual prizes. These features are addictive, harmful, and illegal, and my office is suing to stop Valve's illegal conduct and protect New Yorkers."

Valve, a developer, publisher, and distributor of video games, also operates the Steam platform, which allows users to download and play its titles. The lawsuit alleges that Valve's loot box system mirrors gambling

mechanics by charging users for randomized rewards, with odds set by the company.

In games such as Counter-Strike 2, players can purchase virtual containers that, when opened, reveal cosmetic items such as weapon skins or character accessories. The selection process is randomized and presented through animations that resemble slot machines, the complaint states. While the items do not affect gameplay, their rarity can give them substantial real-world value.

State investigators allege that Valve intentionally makes certain items difficult to obtain, increasing their scarcity and market value. Some of the rarest items have sold online for thousands of dollars, with at least one reportedly exceeding \$1 million.

The lawsuit further claims that a thriving secondary market has developed around these virtual goods. According to the OAG, users can sell items through Valve's Steam Community Market, where proceeds can be used to purchase games and other digital content. Additionally, players can link their accounts to third-party marketplaces that allow items to be exchanged for real currency.

The attorney general's office alleges that Valve facilitates these third-party transactions, effectively enabling users to convert virtual rewards into cash. This, the lawsuit argues, transforms loot boxes into a form of gambling under New York law.

The value of these digital assets has grown significantly in recent years. In 2025, the market for Counter-Strike skins reportedly surpassed \$4.3 billion, drawing interest not only from players but also from investors and speculators.

The complaint also raises concerns about security risks tied to the system. Investigators found that Valve has received hundreds of thousands of support requests from users reporting hacked accounts or fraudulent transfers of valuable items. The high monetary value of rare skins has made them attractive targets for theft, according to the OAG.

Attorney General James emphasized the potential harm to younger users, arguing that loot box systems can introduce minors to gambling-like behavior. The lawsuit cites research indicating that children exposed to gambling are four times more likely to develop gambling problems later in life.

The complaint further asserts that young players may feel pressure to spend money in pursuit of rare items that enhance their status within virtual communities. The OAG contends that this dynamic can lead to compulsive spending and financial harm, particularly among users with limited resources.

In addition to its gambling-related claims, the lawsuit references broader concerns about the content of some of Valve's games, including depictions of violence. The filing argues that exposure to such content, combined with gambling-like mechanics, may contribute to negative developmental outcomes among younger players.

The state is seeking a court order to permanently prohibit Valve from offering loot box features that violate New York law. The lawsuit also requests disgorgement of profits allegedly obtained through the system, along with civil penalties and fines.

The case marks the latest action by James aimed at regulating online platforms and protecting minors. Earlier this month, the attorney general issued warnings about risks associated with sports betting and prediction markets ahead of the Super Bowl. She has also joined a bipartisan coalition of attorneys general urging Congress to pass the Kids Online Safety Act.

In recent years, James has pursued enforcement actions against major technology companies, including lawsuits involving Meta and TikTok, alleging harm to young users' mental health. Her office has also taken steps to shut down online casinos operating illegally in New York.

The case against Valve is being handled by attorneys and analysts within the Bureau of Internet and Technology, part of the state's Division of Economic Justice.

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Valve Responds to the New York Attorney General Lawsuit

Dear New York customers of Counter-Strike 2, Dota 2, and Team Fortress 2:

You may have seen the New York Attorney General recently filed a lawsuit against Valve claiming mystery boxes (like crates, cases, and chests) in some of our games violate New York gambling laws. We don't

believe that they do, and were disappointed to see the NYAG make that claim after working to educate them about our virtual items and mystery boxes since they first reached out to us in early 2023. We rarely talk about litigation, but we felt we should explain the situation to you.

We shared with the NYAG that these types of boxes in our games are widely used, not just in video games but in the tangible world as well, where generations have grown up opening baseball card packs and blind boxes and bags, and then trading and selling the items they receive. On the physical side, popular products used in this way include baseball cards, Pokémon, Magic the Gathering, and Labubu. In the game space, digital packs similar to our boxes date back to 2004 and are in widespread use. Players don't have to open mystery boxes to play Valve games. In fact, most of you don't open any boxes at all and just play the games—because the items in the boxes are purely cosmetic, there is no disadvantage to a player not spending money.

In the process of cooperating with the NYAG's investigation, we shared with them our efforts over many years to shut down accounts found to be using Valve game items on gambling sites in violation of the Steam Subscriber Agreement. We also shared with them our efforts to combat fraud and theft of users' items and our extraordinary measures to stop gambling sites from taking advantage of Steam accounts and Valve game items. Valve does not cooperate with gambling sites. To date we've locked over one million Steam accounts that were being misused by third parties in connection with gambling, fraud, and theft. We've also shipped features (like trade reversal and trade cooldown) to discourage gambling sites' ability to operate and protect Steam users from fraud. And we forbid any gambling-related business to participate in or sponsor tournaments for our games.

We have serious concerns with many of the alterations the NYAG claims are necessary to make to our games. First, the NYAG seems to believe boxes and their contents should not be transferable. They appear to assume digital mystery boxes and items in our games are different from tangible items like baseball card packs (which contain random cards), and to take issue with the fact that users have the ability to transfer the items they receive through Steam Trading or

user-to-user sales on the Community Market. We think the transferability of a digital game item is good for consumers—it gives a user the ability to sell or trade an old or unwanted item for something else, in the same way an owner can sell or trade a tangible item like a Pokémon or baseball card. NYAG proposes to take away users’ ability to transfer their digital items from Valve games. Transferability is a right we believe should not be taken away, and we refuse to do that.

The NYAG also proposed to gather additional information (beyond what we normally collect in the course of processing payments) about each game user on the off-chance someone in New York was anonymizing their location to appear outside of New York, such as by using a VPN. This would have involved implementing invasive technologies for every user worldwide. Similarly, the NYAG demanded that Valve collect more personal data about our users to do additional age verification—even though most payment methods used by New York Steam users already have age verification built-in. Valve knows our users care about the security of their personal information, and we believe it’s in our and their interest to only collect the information necessary to operate the business and comply with law.

We respect New York’s right to determine the laws governing behavior in the state. We will of course comply if the New York legislature passes laws governing

mystery boxes—something it has not done despite considering the issue a few times. Such laws would be the result of a public process, presumably with input from the industry and New York gamers. The type of commitments the NYAG demanded from Valve went far beyond what existing New York law requires and even beyond New York itself. It may have been easier and cheaper for Valve to make a deal with the NYAG, but we believed the type of deal that would satisfy the NYAG would have been bad for users and other game developers, and impacted our ability to innovate in game design.

In addition, although this case is about mystery boxes, we feel the need to address comments made by the NYAG about games, real world violence, and children. Those extraneous comments are a distraction and a mischaracterization we’ve all heard before. Numerous studies throughout the years have concluded there is no link between media (movies, TV, books, comics, music, and games) and real-world violence. Indeed, many studies highlight the beneficial impact of games to users.

Ultimately, a court will decide whose position—ours or NYAG’s—is correct. In the meantime, we wanted to make sure you were aware of the potential impact to users in New York and elsewhere.

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News Briefs

Nona Lee Joins Womble Bond Dickinson as Senior Counsel in GCSolutions Team

Nona Lee, a highly respected sports lawyer, has joined Womble Bond Dickinson as Senior Division Counsel, bolstering the firm’s GCSolutions team. Lee was previously Executive Vice President and Chief Legal Officer with Arizona Diamondbacks. At Womble, she will help the GCSolutions team “with large-scale projects that can strain an organization’s budget,” according to Lee, who is very active in the Sports Lawyers Association and a Past President.

“The team also provides cost-effective guidance to clients in day-to-day corporate needs, from interfacing with business teams for routine questions to reviewing/drafting commercial contracts and policies and procedures. For small and medium-sized businesses, GCSolutions can serve as an in-house legal department or assist existing in-house resources. In addition, entrepreneurs and start-ups rely on GCSolutions’ high-quality service at flexible rates. I’m excited to bring my 30 years of litigation and transactional practice experience, including more than 20 years as in-house counsel in professional sports, to this talented team and look forward to supporting clients as they navigate their business and operational goals.”

Lee will also continue her groundbreaking equity and inclusion work through Truth Is. Consulting (formerly Truth DEI) and Truth Retreats, as well as serving as an arbitrator on the arbitration panels of the AAA and Fair Sports.

Sports Lawyers Association to Focus on Major Industry Issues at 2026 Conference

The Sports Lawyers Association (SLA) will host its 51st annual conference at the Sheraton Grand Chicago Riverwalk from May 13–16, bringing together lawyers, academics and practitioners from across the sports industry to analyze emerging legal issues.

The four-day event, centered on the theme “Going Beyond the Game: Growing the Landscape of Sport,” reflects sports law’s expanding influence on governance, marketing, business operations and athlete representation.

According to the agenda, which can be viewed [here](#), the conference will feature a variety of panels, academic sessions and networking opportunities addressing both traditional and emerging challenges in sports law. Panel topics will include regulatory compliance, governance structures and the evolving business of sport.

The agenda also includes academic programming with research presentations highlighting recent scholarship in sports law and related fields. These sessions are designed to connect theory with practice, offering insight into current legal trends and policy issues affecting the industry.

Panels throughout the conference will examine a range of issues impacting sports organizations and leagues. Topics include the legal implications of technology, commercial rights and the increasingly complex regulatory environment governing teams and leagues.

In addition to formal programming, networking events and social gatherings are planned to foster collaboration among participants. These opportunities are intended to connect professionals from law firms, professional leagues, universities and governing bodies.

The SLA conference has long served as a hub for sports law professionals, providing educational opportunities and encouraging dialogue across the industry. The 2026 event continues that tradition while expanding beyond a purely academic focus to incorporate interdisciplinary perspectives and broader societal considerations.

Now in its 51st year, the association’s annual conference reflects the continued growth of sports law as a distinct field of legal practice. As the sports industry evolves, SLA leaders have positioned the conference as a forum for examining how legal frameworks must adapt to new challenges.

With attendees expected from across the United States and internationally, the 2026 conference will provide a platform to discuss current developments in the business and regulation of sport. The agenda underscores the growing need for legal solutions to keep pace with the rapidly changing sports landscape.

To register, go [here](#).